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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,908	02/17/2004	James Thomas Kenny		9006

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EXAMINER

LAYNO, BENJAMIN

ART UNIT PAPER NUMBER

3711

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/779,908

Applicant(s)

KENNY ET AL.

Examiner

Benjamin H. Layno

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-14 and, now new claims 15-32, have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 15-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardo et al. in view of Webb and Fargano.

The patent to Lombardo discloses a method of playing a poker game comprising a standard deck of 52 playing cards. To play Lombardo's game a player places a first wager (ante) 24 against a dealer. Three cards 18, 20, 22 are dealt to the player, and three cards are dealt to the dealer. The player folding his hand and forfeiting his wager if the player does not wish to play, col. 3, lines 20-22. The player proceeding to play the game against the dealer by playing a support wager 34 in support of the first wager. The game ends if the dealer fails to achieve a qualifying hand (queen high), col. 3, line 66 to col. 4, line 1. The player's best two card poker hand is then compared against the dealer's best two card poker hand to determine the relative ranking, col. 3, lines 25-29. Dealer pays the player if the player's hand outranks the dealer's hand, and the dealer

takes the player's wagers if the dealer's hand outranks the player's hand, col. 4, lines 6-9. If the player decides to continue to play the game (2nd round), it is inherent that the player place a second wager (ante) against the dealer, and a 2nd round of the game is played repeating the steps above.

The Applicant has argued that "Lombardo patent is not a two card poker game". In Lombardo's game, see Fig. 6, the player's best two card poker hand 118, 122 is compared against the dealer's best two card poker hand 136, 138 according to two-card poker rankings, col. 4, line 66 to col. 5, line 11. Thus, Lombardo's game is a two-card poker game.

In regard to claim 18, it is known in the poker art to use more than one card deck to play poker. In view of such teaching, it would have been obvious to use a plurality of cards decks in Lombardo's poker game in order to prevent cheating (counting cards, marking cards, etc.).

The patent to Webb discloses a method of playing a poker game wherein each player and the dealer are each dealt a hand of three cards. Webb teaches that it is known in the poker art to allow a player to place a wager against a dealer's hand (Ante wager), and allowing the player to place **a separate voluntary wager against a predetermined pay scale (Pair Plus)**. In view of such teaching, it would have been obvious to modify Lombardo's game by allowing a player to also place a separate voluntary wager against a predetermined pay scale. This modification would have given players, especially players that lose to the dealer, a second chance at winning a payout. Thus making Lombardo's game more exciting to play.

Webb also teaches that it is well known in the poker art to include jokers in the deck of cards, col. 3, lines 36-39. In view of such teaching, it would have been obvious to include jokers to Lombardo's deck of cards. Determining exactly how many joker to include is simply a casino business decision, which is always obvious in the art.

In regard to claim 25, Webb teaches that it is known in the poker art to include a progressive jackpot side wager for achieving certain hands (e.g. Royal Flush), col. 7, lines 44-50. In one embodiment, Webb a winning jackpot hand may be a player's hand combined with the dealer's hand, col. 7, lines 51-55. Thus, the player progressive jackpot side wager is a bet on the value of the dealer's hand. In view of such teaching, it would have been obvious to modify Lombardo's game by allowing a player to also place a progressive jackpot side wager for achieving certain hands. The certain hands would have included a combined hand of the player's hand and the dealer's hand. This modification would provided larger payoff amounts, thus making Lombardo's game more exciting to play.

Concerning claim 22, Webb teaches that it is known in the poker game art where live poker is played on a table, to provide an electronic version of the poker game, col. 8, lines 53-57. In view of such teaching, it would have been obvious to provide an electronic version of Lombardo's poker game. This modification would have made Lombardo's poker game more attractive to players who are intimidated playing poker on a table.

The Applicant has also argued that "Lombardo does not have a second round.....In our version, the rounds continue and the game continues until a new

shuffle is performed. More rounds area dealt before a shuffle. Lombardo only has one round before a shuffle”.

The patent to Fargano discloses a wagering game that is played with a pack of conventional playing cards. Two opposing two-card poker-like hands are dealt. The pack can be shuffled before each round or once every eight to nine rounds, see paragraph [0013]. Fargano also recites step (I) “placing a cut card in pack to limit penetration to desired number of rounds per shuffle”, paragraph [0042], and step (IX) “Repeating steps two (II) through eight (VIII) until the cut card appears and initiates reshuffling”, paragraph [0051].

In view of Fargano’s teaching, it would have been obvious to modify Lombardo’s rules by allowing two or more rounds of Lombardo’s game to be played before a shuffle. This modification would have saved time by reducing the number of shuffles, thereby increasing the number of rounds played over a time period, thus making Lombardo’s game more efficient and more profitable.

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardo et al. in view of (Webb and Fargano) as applied to claim 1 above, and further in view of Hesse et al.

The patent to Hesse et al. teaches that it is common in card games to provide a “bad beat” wager, col. 6, lines 7-15. In view of such teaching, it would have been obvious to provide a “bad beat” wager to Lombardo’s game. This modification to

Lombardo's game would have given players that lose to the dealer, but have very good hands, to win a jackpot. Thus, giving players a second opportunity at winning.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardo in view of (Webb and Fargano) as applied to claim 1 above, and further in view of Hedman.

The patent to Hedman discloses a poker game played between players and a dealer, wherein a player's hand is compared to a dealer's hand. According to the rules, before a player's hand is compared to the dealer's hand, the player's hand must qualify (must have a pair or better) to continue play, col. 7, lines 31-34. In view of such teaching, it would have been obvious to provide a rule to Lombardo's game requiring players' hands to qualify in order to continue play. This modification would have increased the house advantage, thereby increasing profits.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 15-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15, paragraph a., recites "at least one standard deck of 52 playing cards **plus at least one joker**", while claim 16, line 2 recites "at least one standard deck of 52

playing cards **with no additional jokers used**". These recitations are inconsistent.

Correction is required.

In claim 28, the recitation "the Play bet" and "the Ante bet" are both indefinite and lack antecedent basis. **There is no recitation of "Play bet" and "Ante bet" in the previous claims.**

Conclusion

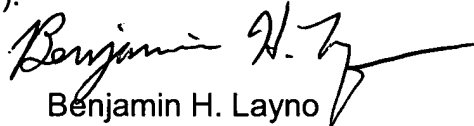
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl